

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**RICO HAIRSTON,**

**Plaintiff,**

**Case No. 2:18-cv-952**

**vs.**

**Judge George C. Smith**

**Chief Magistrate Judge Elizabeth P. Deavers**

**MR. DAILY, *et al.*,**

**Defendants.**

**REPORT AND RECOMMENDATION**

On August 24, 2018, Plaintiff Rico Hairston, a state inmate proceeding without the assistance of counsel, commenced this action, but failed to pay the requisite filing fee, instead applying for leave to proceed *in forma pauperis*. (ECF No. 1.) On November 5, 2018, the undersigned recommended that Plaintiff's motion be denied because at least three of his prior cases have been dismissed as frivolous pursuant to 28 U.S.C. § 1915(g), known as the "three-strikes provision." (ECF No. 8.) On December 7, 2018, the Court adopted this recommendation, denying Plaintiff leave to proceed *in forma pauperis* and ordering Plaintiff to pay the filing fee within thirty (30) days from the date of the Order. (ECF No. 9.) The Court specifically advised Plaintiff that failure to pay the fee would result in dismissal of the action. (*Id.* at 1.)

More than thirty (30) days have passed since the Court issued the Order (ECF No. 9) and Plaintiff has failed to pay the full filing fee<sup>1</sup> despite being warned of the consequences of failing

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<sup>1</sup> In prior decisions, the Court mistakenly referred to the filing fee as \$400 instead of the correct amount, \$350. (ECF Nos. 2, 4, 8, 9.)

to do so. Accordingly, it is **RECOMMENDED** that Plaintiff's claims be dismissed for failure to prosecute.

### **PROCEDURE ON OBJECTIONS**

If any party seeks review by the District Judge of this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties objections to the Report and Recommendation, specifically designating this Report and Recommendation, and the part in question, as well as the basis for objection. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the Report and Recommendation will result in a waiver of the right to de novo review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See, e.g., Pfahler v. Nat'l Latex Prod. Co.*, 517 F.3d 816, 829 (6th Cir. 2007) (holding that "failure to object to the magistrate judge's recommendations constituted a waiver of [the defendant's] ability to appeal the district court's ruling"); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court's denial of pretrial motion by failing to timely object to magistrate judge's report and recommendation). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) ("[A] general objection to a magistrate judge's report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal . . .") (citation omitted)).

**IT IS SO ORDERED.**

**DATED: January 14, 2019**

/s/ Elizabeth A. Preston Deavers  
**ELIZABETH A. PRESTON DEAVERS**  
**CHIEF UNITED STATES MAGISTRATE JUDGE**